

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In Re: Recalled Abbott Infant Formula Products Liability Litigation)	Case No. 22 C 4148 MDL No. 3037
THIS DOCUMENT RELATES TO: ALL CASES)	Hon. Judge Matthew F. Kennelly
)	
CHARLOTTE WILLOUGHBY,)	
LAKENDREA CAMILLE MCNEALY,)	
SHAYLYNN DOXIE, BRITTNEY GRAY,)	
KATLEENA HELMICK, LANI)	
HOLIDAY, ASHLEY POPA, and)	
DENIEGE REVORD individually and on behalf of a class of similarly situated individuals,)	Case No. 22 C 1322
Plaintiffs,)	Hon. Judge Matthew F. Kennelly
)	
v.)	
ABBOTT LABORATORIES,)	
)	
Defendant.)	
)	
In Re: Recalled Abbott Infant Formula Products Liability Litigation)	Case No. 23 C 338
)	Hon. Judge Matthew F. Kennelly
)	

**JOINT STATUS REPORT
FOR THE APRIL 21, 2023 CASE MANAGEMENT CONFERENCE**

Per the Court's Order, MDL ECF 90 (Case No. 1:22-cv-4148), the parties are providing the following report regarding the status of the MDL and *Willoughby* matter.

I. STATUS OF FILED MDL CASES

The parties are presently aware of 67 cases pending in the Northern District of Illinois pertaining to Abbott's recalled infant formula. This includes 50 cases alleging personal injury following consumption of Abbott recalled products and 17 class action complaints alleging economic loss (pending the formal dismissal of certain actions described below, *see also* MDL ECF 102).

The parties believe all related cases have been associated with the MDL with the exception of the following, which the parties request be so associated:

- 1:22-cv-05494 *Kilpatrick v. Abbott Laboratories Inc.*¹
- 1:23-cv-00252 *Emert v. Abbott Laboratories Inc.*
- 1:23-cv-01855 *Ortiz v. Abbott Laboratories Inc.*

II. STATUS OF DISCOVERY

MDL.

Joint Statement of the Parties: The MDL parties continue to make progress in responding to each side's respective discovery requests. To date, Abbott has made six productions, totaling over 75,000 documents (over 240,000 pages), including FDA audit materials, environmental and product test records, and organizational charts. The MDL parties are engaged in regular, productive meet and confers over what search terms are to be applied to Abbott's custodial productions. Likewise, the MDL parties have met and conferred in an effort to narrow remaining disputes relating to class representative discovery responses. Finally, the MDL parties are engaged

¹ The *Kilpatrick* case appears on the Court's docket as a "related" case, but not as "associated" with the MDL.

in the process set forth in CMO 3 relating to personal injury plaintiffs' Fact Sheets and Authorizations.

Willoughby.

Plaintiffs' Statement: Plaintiffs served requests for the production of documents on September 29, 2022. Abbott has refused to respond to those requests or engage in a Rule 26 conference. Abbott indicated that it intended to seek a stay of discovery pending a decision on the motion to dismiss, but never did. Conferrals on this Joint Status Report is the first notice provided to the *Willoughby* Plaintiffs that any discovery or meet and confers have been on-going in any of the cases. Plaintiffs provided a draft protective order to Abbott and are prepared to provide an ESI protocol within two weeks. Plaintiffs request that the Court order the parties to schedule a Rule 26 conference within two weeks.

Abbott's Statement: The *Willoughby* Plaintiffs' description of the *Willoughby* discovery history is inaccurate.

On September 29, 2022, while the case was still pending before Judge Maldonado, the *Willoughby* Plaintiffs served 31 document requests that overlapped extensively with the document requests served in the MDL.

Abbott responded to the *Willoughby* Plaintiffs on October 11, 2022. Abbott noted that no Rule 26(f) conference had yet occurred, and that "the Requests [were therefore] premature" and void. *See Fed. R. Civ. P. 26(d)*. Separately, Abbott took the position that "any discovery [was] premature while Abbott's Motion to Dismiss [was] pending," especially given the "threshold" issues of standing, primary jurisdiction, and severance/consolidation that Abbott had raised in its motion before Judge Maldonado.

The parties subsequently met and conferred on several occasions about how to handle discovery in *Willoughby* while Abbott's Motion to Dismiss or Sever was pending, without reaching any resolution. Abbott thereafter moved for the *Willoughby* case to be transferred to this Court's docket alongside the MDL in December 2022, 22-1322 ECF 43, which this Court granted in January 2023, 22-1322 ECF 47.

From the time Abbott moved for transfer last December, up to the preparation of the present Joint Statement, the *Willoughby* Plaintiffs never raised discovery issues with Abbott at all (other than a single email about a proposed confidentiality order in February 2023, to which Abbott promptly responded with its comments). Abbott had therefore assumed that the *Willoughby* Plaintiffs were actively collaborating with the MDL Plaintiffs on discovery or waiting until the pending motion to dismiss the *Willoughby* action was resolved. Apparently that assumption was incorrect.

If the *Willoughby* Plaintiffs now wish to press forward with their case, rather than awaiting the outcome of the Motions to Dismiss, Abbott submits that they should be required to coordinate with the MDL Plaintiffs; obtain and review the MDL discovery; determine what (if anything) they reasonably require that is not already encompassed within the MDL discovery record; and then proceed to serve tailored, non-duplicative requests for that unique information. Until the *Willoughby* Plaintiffs have taken these threshold steps to avoid duplication and overlap, Abbott submits that any further discovery proceedings in *Willoughby* are unwarranted.

III. PENDING MOTIONS AND STIPULATIONS

Motions to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) & 12(b)(6). There are currently three pending motions to dismiss brought by Abbott pursuant to Federal Rules 12(b)(1) and 12(b)(6):

- i. Motion to Dismiss MDL Personal Injury Complaints [Motion at MDL ECF 63 & 63-1, Opposition at MDL ECF 87, and Reply at MDL ECF 96]
- ii. Motion to Dismiss MDL Amended Consolidated Class Action Complaint [Motion at MDL ECF 94 & 94-1, Opposition at MDL ECF 97, and Reply due to be filed on April 19, 2023]
- iii. Motion to Dismiss the *Willoughby* action [Motion at 23-338 ECF 21-23, Opposition at 23-338 ECF 24, and Reply at 23-338 ECF 28].

These motions are scheduled for oral argument on May 1, 2023, with the hearing on the class action/economic loss complaints and the *Willoughby* complaint scheduled for 9:30 a.m. and the hearing on the personal injury complaints scheduled for 11:00 a.m. MDL ECF 106, 107. At the upcoming status conference, the parties would appreciate guidance from the Court as to the format, organization, and/or time limitations for the argument as well as on any specific issues the Court would like addressed (including as it relates to the potential overlap between issues raised in the motions regarding the *Willoughby* matter and MDL Class Action Plaintiffs).

Additionally, with specific regard to the *Willoughby* matter, at the February 1 Status Conference, the Court stated that it would be willing to entertain supplemental submissions regarding regulatory developments that postdate the close of briefing on the *Willoughby* Motion to Dismiss. Because the FDA has taken further actions and courts have issued relevant decisions, Abbott believes that such supplementation would be helpful. Accordingly, Abbott requests that the Court grant leave to both Abbott and the *Willoughby* Plaintiffs to file supplemental submissions of five pages or fewer, limited in scope to the FDA/primary jurisdiction issues. Abbott proposes that both parties' briefs (if they choose to file one) be due on or before Friday, April 21, 2023. Abbott believes that further responses or replies are not necessary.

Motion to Dismiss Non-Responsive MDL Plaintiffs. On March 29, 2023, Abbott filed a motion to dismiss as to six economic-loss MDL Plaintiffs who have not responded to discovery and who are not included in the Amended Consolidated Class Action Complaint. MDL ECF 99,

100. Per the Court's Order, MDL ECF 103, any response is to be filed by April 18, 2023, and any reply is to be filed on April 25, 2023.

Second Amended Joint Stipulation Regarding Certain MDL Plaintiffs. On April 3, 2023, the MDL parties filed a Second Amended Joint Stipulation Regarding Voluntary Dismissal of Certain Class Action Plaintiffs and Claims. MDL ECF 102. On April 4, 2023, the Court directed the parties to prepare and submit a proposed order as to the stipulation, including to identify whether any particular cases could be closed on account of the stipulation. MDL ECF 104. On April 10, 2023, the parties submitted a proposed order, which, among other things, identified four actions that the parties believe can be closed on account of the stipulation.

IV. OTHER MATTERS

Andaluz Action. On February 23, 2023, the MDL parties filed a Joint Stipulation Regarding Voluntary Dismissal of the *Andaluz* Action to address jurisdictional issues related to that action, which was originally filed in the United States District Court for the Central District of California. MDL ECF 92. The parties are awaiting a corresponding order dismissing that action (currently pending as Case No. 1:22-cv-04157) without prejudice in the Central District of California, so that the Plaintiffs in the *Andaluz* Action may re-file in this Court.

Dated: April 14, 2023

/s/ Stacy K. Hauer

Stacy K. Hauer
JOHNSON BECKER, PLLC
444 Cedar Street, #1800
St. Paul, MN 55101
Tel: 612-436-1806
Fax: 612-436-1801
shauer@johnsonbecker.com

E. Samuel Geisler
AYLSTOCK, WITKIN, KREIS &
OVERHOLTZ, PLLC
17 E. Main St., Suite 200
Pensacola, FL 32561
Tel: 850-202-1010
Fax: 850-916-7449
sgeisler@awkolaw.com

Co-Lead Counsel for MDL Plaintiffs

Respectfully submitted,

/s/ Michael A. Glick

James F. Hurst, P.C.
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
Tel: 312-862-2000
Fax: 312-862-2200
james.hurst@kirkland.com

Michael A. Glick (*pro hac vice*)
Erin E. Cady (*pro hac vice*)
Katherine R. Katz (*pro hac vice*)
KIRKLAND & ELLIS LLP
1301 Pennsylvania Ave, NW
Washington, DC 20004
Tel: 202-389-5000
Fax: 202-389-5200
michael.glick@kirkland.com
erin.cady@kirkland.com

Brad Masters (*pro hac vice*)
KIRKLAND & ELLIS LLP
60 East South Temple
Salt Lake City, UT 84111
Tel: 801-877-8143
Fax: 801-877-8101
brad.masters@kirkland.com

*Counsel for Abbott Laboratories in MDL
No. 3037*

/s/ Rebecca A. Peterson

Kara A. Elgersma
WEXLER, BOLEY & ELGERSMA LLP
311 S. Wacker, Suite 5450
Chicago, Illinois 60606
Tel: (312) 342-2222
kae@wbe-llp.com

Rebecca A. Peterson
Robert K. Shelquist
LOCKRIDGE GRINDAL NAUEN P.L.L.P
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401
Tel: (612) 339-6900
Fax: (612) 339-0981
rapeterson@locklaw.com
rkshelquist@locklaw.com

Daniel E. Gustafson (*pro hac vice*)
Catherine Sung-Yun K. Smith
GUSTAFSON GLUEK, PLLC
Canadian Pacific Plaza
120 South 6th Street, Suite 2600
Minneapolis, MN 55402
Tel: (612) 333-8844
Fax: (612) 339-6622
dgustafson@gustafsongluek.com
csmith@gustafsongluek.com

Katrina Carroll
Kyle A. Shamborg
LYNCH CARPENTER LLP
111 W. Washington Street, Suite 1240
Chicago, IL 60602
Tel: (312) 750-1265
Fax: (312) 212-5919
katrina@lcllp.com
kyle@lcllp.com

/s/ William F. Cavanaugh, Jr.

William F. Cavanaugh, Jr.
Jonah M. Knobler
PATTERSON BELKNAP WEBB &
TYLER LLP
1133 Avenue of the Americas
New York, NY 10036
Tel: (212) 336-2000
Fax: (212) 336-2222
wfcavanaugh@pbwt.com
jknobler@pbwt.com

Jonathan D. Brightbill
Francie Berger
WINSTON AND STRAWN LLP
1901 L Street NW
Washington, DC 20036
Tel: (202) 282-5855
Fax: (202) 282-5100
JBrightbill@winston.com
FBerger@winston.com

Sarah E. Harmon
WINSTON AND STRAWN LLP
35 West Wacker Drive
Chicago, IL 60601
Tel: (312) 558-5600
Fax: (312) 558-5700
sharmon@winston.com

*Counsel for Abbott Laboratories
in Willoughby*

Stephen R. Basser (*pro hac vice*
forthcoming)
BARRACK RODOS & BACINE
One America Plaza
600 West Broadway, Suite 900
San Diego, CA 92101
Tel: (619) 230-0800
Fax: (619) 230-1874
sbasser@barrack.com

Michael Liskow
Janine L. Pollack
CALCATERRA POLLACK LLP
1140 Avenue of the Americas, 9th Floor
New York, NY 10036
Tel: (917) 899-1765
mliskow@calcaterrapollack.com
jpollack@calcaterrapollack.com

Lori G. Feldman
GEORGE GESTEN MCDONALD, PLLC
102 Half Moon Bay Drive
Croton-on-Hudson, NY 10520
Tel: (917) 983-9321
LFeldman@4-Justice.com
E-service: eService@4-Justice.com

David J. George
Brittany L. Brown
GEORGE GESTEN MCDONALD, PLLC
9897 Lake Worth Road, Suite #302
Lake Worth, FL 33467
Tel: (561) 232-6002
DGeorge@4-Justice.com
E-service: eService@4-Justice.com

John G. Emerson*
EMERSON FIRM, PLLC
2500 Wilcrest Drive, Suite 300
Houston, TX 77042
Tel: (800) 551-8649
Fax: (501) 286-4659
jemerson@emersonfirm.com

Charles LaDuca
CUNEO GILBERT & LADUCA, LLP
4725 Wisconsin Avenue NW, Suite 200
Washington, D.C. 20016
Tel: (202) 789-3960
Fax: (202) 789-1813
charles@cuneolaw.com

Simon B. Paris, Esq.
Patrick Howard, Esq.
SALTZ MONGELUZZI & BENDESKY,
PC
1650 Market Street, 52nd Floor
One Liberty Place
Philadelphia, PA 19103
Tel: (215) 496-8282
Fax: (215) 754-443
sparis@smbb.com
phoward@smbb.com

Counsel for Willoughby Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2023, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's system and/or by e-mail.

By: /s/ Michael A. Glick

Michael A. Glick